IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9373 OF 2004

Rajnath Shitlaprasad Mishra .. Petitioner.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr.A.M.Saraogi for the petitioner.
Mr.S.K.Chinchalikar AGP for respondent no.1.
Mr.A.J.Bhor for respondent no.2.
Mr.Murthy for respondent no.3.

CORAM : D.B.BHOSALE, J.

DATED : 2ND DECEMBER, 2004

P.C.:

. Heard Mr.Saraogi, learned counsel for the petitioner, Mr.Chinchalikar, learned A.G.P. for respondent no.1, Mr.Bhor, learned counsel for respondent no.2 and Mr.Murthy, learned counsel for respondent no.3.

2. This petition is directed against the order dated 5.10.2004 passed by the City Civil Court by which the Chamber Summons filed by respondent no.3 under Order 1 Rule 3 and 10 of Code of Civil Procedure for adding him as a party defendant has been allowed holding that he is necessary party. The petitioner has filed the suit

challenging the notice under section 314 of the Mumbai Municipal Corporation Act. Respondent no.3 claims ownership of the property where disputed structure stands and, therefore, according to him he is necessary party to the suit. Mr.Saraogi, learned counsel for the petitioner, however, submits that in view of the fact that the said property has now been included in the Town Planning scheme, respondent no.3 has no concern with it and, therefore, his presence is not necessary in the suit. The law is well settled that where the court feels that inspite of the opposition of the plaintiff it is necessary to add a person as the defendant and his presence would be necessary to completely settle the matter in controversy and adjudicate upon all the questions involved in this proceedings the court has ample powers to grant application for adding such person as party to the proceedings. From perusal of the order, I am satisfied that the court has rightly exercised its discretion for the reasons recorded in the order. I find no reason to interfere with the discretionary order passed by the court below which to my opinion is just and proper. The writ petition, therefore, fails and is dismissed as

such.

3. The time to carry out amendment in pursuance of the order impugned stands extended for a period of two weeks from today. The learned counsel appearing for the respondents state that entire development has come to standstill because of the disputed structure and, therefore, they pray for expediting hearing of the motion as also of the suit. I see no reason not to accept the request made by learned counsel appearing for the parties. The hearing of the motion as well as the suit is expedited.

. The writ petition is disposed of.

(D.B.Bhosale, J.)